

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 13**

WAUKEGAN NEWS SUN

Employer

and

Case 13-RC-21480

CHICAGO NEWSPAPER GUILD LOCAL 34071

Petitioner

DECISION AND ORDER

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held on April 25 and 26, 2006 before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.¹

I. Issues

The Chicago Newspaper Guild Local 34071 (herein the Petitioner) seeks an election within a unit comprised of all advertising employees employed by the Waukegan News Sun (News Sun) at its facility located at 2383 N. Delaney Road, Waukegan, Illinois (herein called the Waukegan facility).

The News Sun is one of five daily newspapers that comprise the Fox Valley Group, one of five subsidiary corporations of Hollinger International (Hollinger). The News Sun is located on the first floor of a building in Waukegan, Illinois. The second floor of that facility is occupied by Pioneer Press, a subsidiary of Hollinger. The record does not show whether the News Sun is merely an operating division of the Fox Valley Group or whether it exists as a separate corporate entity. Hollinger entered an appearance at hearing by Counsel as an interested party. Hollinger's interest in the instant proceeding is based on a corporate reorganization that will combine its five subsidiaries into one company or entity called the Sun Times New Group (STNG) and will combine all the separate advertising departments into one department. With

¹ Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

this reorganization plan all the employees in the combined advertising department will become employees of Hollinger.

Based on the reorganization plan, Hollinger/the News Sun contend the petition should be dismissed. First, they contend that by the end of May, 2006 the bargaining unit will cease to exist as the separate advertising departments will be combined into one department under STNG. Second, they contend the petition is premature as the scope and employee make up of the proposed bargaining unit is undergoing a fundamental change.² The Petitioner contends that the reorganization plan is speculative and remote, and, therefore, an election should be conducted in a unit of the News Sun advertising department employees. Alternatively, at the conclusion of the hearing the Petitioner stated it would be proceed to an election in a single location unit at Waukegan consisting of the combined advertising department employees of the News Sun and the Pioneer Press that would remain at Waukegan after the implementation of the reorganization plan.

II. Decision

Based on the entire record in this proceeding and for the reasons detailed below, I find:

1. The reorganization plan as it affects the petitioned for employees is in progress and should be substantially completed as to structure and employee complement within a month. It is therefore neither speculative nor remote.
2. The reorganization plan raises substantial issues regarding whether the scope of the smallest appropriate unit encompassing the petitioned for employees would be a single location unit, a regional unit, or a department wide unit which can not be resolved on the record herein on the present state of the reorganization plans development.
3. Even *assuming arguendo* that a single location unit of advertising employees at the Waukegan facility was found to be appropriate, the record shows that there will be a substantial change in the identity of the advertising employees working at that facility, some of which is not presently known. Given the relatively short time for the reorganization plan to be substantially deployed, a more representative election can be conducted at when the reorganization is substantially complete without undue delay to employees' organizational rights.
4. There shortly will be a change in the identity of the Employer of the petitioned for advertising employees at the News Sun which is not named in the petition and which only participated as an "interested" party. Further, while there are statements in the record that Hollinger will be the Employer, the reorganization is being carried out under STNG and the record is not clear whether STNG is a separate legal entity or an operating part of Hollinger.

Accordingly, IT IS HEREBY ORDERED that the petition in the above matter be, and it hereby is, dismissed without prejudice. See, *Gaithersburg-Washington Grove Fire Dept., Inc.*, 255 NLRB 921 (1981).

² In light of my disposition of the petition in this matter as described below, the post-hearing Motions to Amend the Record and to Re-open the Record filed by Hollinger International which did not appear as a party herein, are moot.

III. Statement of Facts

A. Overview

The employees in the advertising department of the News Sun have until recently operated independently of other advertising departments operated by Hollinger. Although the employees in question work from a single location, plans to restructure the parent company's operation will result in their placement in a larger subdivision of the parent company's reorganized operation with other individuals who perform the same services in other locations. However, when the restructuring is complete, some of the News Sun advertising employees will still be in the same building in Waukegan.

The News Sun is a local newspaper based in Waukegan, Illinois that is owned by the Fox Valley Group, a subsidiary of Hollinger. The other corporate entities owned by Hollinger include: the Pioneer Press, Chicago Sun Times, and the Midwest Suburban Group located in Illinois plus the Post Tribune located in Indiana. The Fox Valley Group publishes several local newspapers including the News Sun. The News Sun is a daily newspaper except for Sundays and calls itself a STNG publication. Under the auspices of the News Sun, STNG also publishes the La Luz newspaper to serve the Hispanic community in the area and a monthly publication called the Family Times. The editorial staff for the News Sun and the advertising department are based in the Waukegan office although the actual paper is printed in Northlake Illinois.

B. The News Sun Operation

The News Sun advertising staff is located on the first floor of the building in Waukegan which also houses a Pioneer Press office on the second floor. The advertising department of the News Sun is supervised by David Sherman and consists of 11 outside sales account executives, 6 graphic artists, two support staff and a support staff manager. The advertising department generates revenue for the newspaper by selling advertisements to clients.

The account executives solicit ads from customers either by phone, e-mail or in person. Certain clients are regular customers that place ads on a regular basis and generate larger amounts of revenue than other clients. Depending on the circumstances and the client's needs, one client may do business with more than one account executive. Once an order is received the account executive generates an order entry ticket which is given to the support staff CJ operator who inputs the information into the computer system. The ad is designed by the graphic artist with input from the account executive. Each account executive is paired with an artist for all of the account executive's work. The account executive provides the artist with information concerning the size, color, section of the newspaper and day when the ad is to be published. There are certain premium positions and banner ads within the newspaper that are also sold by the account executives.

Once the information is input into the computer and a job ticket is generated, the artist then designs the ad and submits a proof to the account executive for review by the client. The proof is sent to the client and when approved is then sent to the printing facility for inclusion in the newspaper. The support staff monitors various "boards" to insure that various tasks are performed on time as needed. The support staff works with the account executives and performs various office tasks such as making copies and preparing envelopes for mailing as directed.

C. The Pioneer Press Operation

Pioneer Press has operations on the second floor of the Waukegan facility, including its own advertising department with different employees performing the same tasks as performed by the News Sun advertising department. The Pioneer Press employees have a separate key card entrance to their space. Two or three of the News Sun account executives make cross sales to clients for inclusion in one of the Pioneer Press newspapers. As a result, here, and in other newspapers owned by Hollinger, clients may be served by more than one account executive. Pioneer Press is included in the restructuring taking place to form STNG.

D. The Restructuring Plan

Beginning in about July 2005, Hollinger began a process to streamline its operations to become more efficient and profitable by reorganizing its many properties into one operational group called the Sun Times News Group. Part of the restructuring involves combining all the advertising departments from all its publications into one department. Following a period of planning, the restructuring plan was announced to the public in January 2006 and updated in March 2006. The restructuring was initially viewed as a needing 18 to 24 months to complete from its onset in July 2005 and was in process of being implemented at the time of the hearing. Of the many parts to the restructuring plan, some are on schedule while others are behind and some are ahead of schedule. With respect to the advertising department under STNG, the expected restructuring completion date is sometime near the end of August 2006. The advertising department for STNG has been organized into four regions (North, South, East, and West) under the direction of the vice-president of advertising Boni Fine. Each region has a director who reports to Ms. Fine. News Sun is part of the north region headed by Bill Casey. The north region consists of offices located in Chicago, Waukegan, Park Ridge, Arlington Heights, Oak Park, and two offices in Glenview, all located in Illinois. David Sherman, who is the current manager for the Waukegan advertising operation, will continue to oversee all of the Waukegan territories and the employees assigned there, including the Pioneer Press advertising employees located in Waukegan. The account executives assigned to the various offices will be assigned to specific territories and will be the sole representative for STNG to all of its clients located within their territory. Under the new scheme, each account executive would be able to sell products for all of the STNG properties. At the time of the hearing the decision had already been made as to the placement of the account executives at the Waukegan facility within the reorganized STNG advertising department, and it was expected that the account executives would be in place at their designated locations by mid-May, 2006. It was also expected that the placement of the graphic artists and support staff would be determined by June 1, 2006.

Of the 11 News Sun account executives seven will remain in Waukegan while the rest will be moved elsewhere. Similarly, three of the nine account executives in Waukegan employed by Pioneer Press will be assigned to the STNG advertising department in Waukegan while the others will be assigned to new locations or let go. However, the record does not contain any evidence as to the identities of the specific account executives that will be retained at the Waukegan facility. Training for the advertising department employees under STNG is planned to take place during the period from June through August 2006. A final common rate schedule for advertisers and a common compensation plan for advertising employees is targeted

for implementation by the end of August 2006. Specific information concerning these plans is not contained in the record.

IV. Analysis

At the hearing and in their briefs, the parties focused on whether it is appropriate to conduct an election in the pre-reorganized unit consisting of the advertising department employees of the News Sun or whether the petition should be dismissed on the basis that the petitioned for unit would soon cease to exist or become part of an expanded unit and the attendant issue of whether the reorganization plan is speculative and remote.

The record demonstrates that the reorganization plan as it affects the petitioned for employees was in the process of being implemented at the time of the hearing. Thus, the reorganization is immediate rather than remote. Further, while some details of the reorganization are undetermined³, the basic outcome of the reorganization in terms of the resulting structure of the advertising department, supervisory hierarchy, and location placement of the largest category of employees (the account executives) has been determined. Further, while the specific details have not been worked out, Hollinger has also determined to apply a uniform wage and benefit structure to all the advertising employees consolidated into the one STNG advertising department. In sum, I do not find that the reorganization plan as it will affect the petitioned for unit is speculative on the record herein.

Having found that the reorganization plan is not speculative, the next issue is whether an election can be conducted on the instant petition notwithstanding the reorganization that is in progress. Both the Petitioner and Hollinger/News Sun rely on the same line of Board precedent to support their opposing positions. That line of precedent holds that a representation election will be held notwithstanding pending expansion or reorganization plans as long as there is a “substantial and representative” employee complement in place. *Toto Industries (Atlanta), Inc.*, 323 NLRB 645 (1997). It is the opinion of the undersigned that “substantial and representative” employee complement test is not directly applicable in the instant situation based on the record herein. An underlying predicate for the application of “substantial and representative” employee complement rationale is missing herein – the basis for a determination of an appropriate bargaining unit to measure whether the existing employee complement is “substantial and representative” of the ultimate complement of employees in the unit.

In the instant case, the reorganization raises substantial issues as to determining an appropriate unit on the existing facts. The petitioned for unit of the advertising employees employed by the News Sun is not an appropriate unit to conduct an election given the transition that is in progress, especially in regard to relocation of some employees and combining the remaining segments of the News Sun advertising employees with those of the Pioneer Press. The facts in the record regarding the reorganization plan present three possible units encompassing the petitioned for employees – (1) a single location unit at the News Sun consisting of the combined News Sun and Pioneer Advertising employees that will remain at the Waukegan location; (2) A unit consisting of the advertising employees in the North Region of

³ The most significant undetermined aspect of the reorganization is that the assigned work locations of the graphic artists and support staff have not been determined. The reorganization plan appears to be a work in progress regarding specific details as it is being implemented.

the STNG advertising department; and (3) a department-wide unit consisting of all the STNG advertising department employees⁴. Of these three potentially appropriate units, the Petitioner, at the conclusion of the hearing, only indicated an interest in proceeding to an election in (1), above, if an election was not directed in the pre-reorganized News-Sun advertising department. While there are some factors that indicate a single location unit of the reorganized advertising employees at the Waukegan facility may be appropriate, given the state of the reorganization and the lack of record evidence on appropriate unit criteria in light of the reorganization⁵, the undersigned can not determine whether a reorganized single location unit of advertising employees at the Waukegan facility would be an appropriate unit. For example, the record indicates that the Director of the North Region will be involved in hiring, firing, and discipline matters, but the record does not indicate what authority David Sherman, the manager of the reorganized advertising employees at Waukegan has or will have. Thus, it is not possible to determine if there is sufficient day-to-day autonomy of management at the single News Sun location. Further, there is no record evidence as to employee interchange among the various locations within a Region or in the STNG advertising department. While evidence of actual interchange may not be possible given the new structure, evidence of policies, organizational structure, job duties and functions that reflect whether each location will operate relatively isolated from each other or with significant interaction should be presented to enable a determination of the appropriate unit. In sum, absent a determination of an appropriate unit in the context of the reorganized structure it is not possible to determine if there is a substantial and representative complement of employees⁶. As the scope of the unit is in doubt due to significant and substantial organizational changes that affect the unit, the instant petition is premature as a necessary issues is not ripe for adjudication, and the petition is, accordingly, dismissed. See, *Gaithersburg-Washington Grove Fire Dept., Inc.*, supra in which a petition was dismissed as the Board could not determine if the Employer met the definition of employer in Section 2(2) of the Act due to changes in state regulations under which the employer operated.

The uncertainty in the instant case regarding a material issue that must be resolved prior to directing an election is compounded by the change in the identity of the legal employing entity resulting from the reorganization⁷. The employing entity identified in the petition is the News Sun. However, the record seems to indicate that the actual employing entity of the pre-reorganized advertising department at News Sun was the Fox Valley Group, a subsidiary of Hollinger. The record does not indicate whether the News Sun exists as a separate legal entity apart from the Fox Valley Group. In any event, the record indicates that the advertising employees at all the papers will be directly employed by the parent corporation, Hollinger, organized under STNG, which seems to be an operational part of Hollinger rather than a distinct

⁴ Given the administrative structure and anticipated commonality of pay and benefits, the Regions and the STNG advertising department would, if sought, constitute appropriate units.

⁵ At the hearing the Petitioner focused on the appropriateness of the pre-reorganization News Sun advertising unit and challenging the definiteness of the reorganization plan while Hollinger/News Sun focused on demonstrating the reorganization plan was not speculative.

⁶ If a single location unit were found appropriate consisting of the advertising employees at the News Sun, a representative complement may exist by virtue of the determination of the account executives that will remain.

⁷ I do not find, as Hollinger/News Sun, assert that the petition should be dismissed on the basis that the News Sun advertising department will cease to exist as of May 31, 2006. At best this is a very technical argument based on a change-over of corporate restructuring involving a group of employees ceasing to exist under one corporate structure for the purpose of transferring them to another corporate structure within the same corporate family.

legal entity. Hollinger was not named as the Employer, separately or jointly with the News Sun in the petition, nor was the petition ever amended to reflect Hollinger as an employing entity of the employees at issue.

It is the opinion of the undersigned that it is best to dismiss the instant petition without prejudice as issues raised by the petition are not ripe for resolution given the uncertainty as to the appropriate unit scope, the deficiency in petition's naming of the employing entity, and the relatively short time for the dust to settle from the reorganization so that scope of the unit and the employee assignment to unit positions is more stable. I so find.

V. Right to Request Review

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **June 7, 2006**.

DATED at Chicago, Illinois this 24th day of May, 2006.

/s/ **Harvey A. Roth**

Acting Regional Director
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